

ASSEMBLY BILL

No. 424

**Introduced by Assembly Member McCarty
(Coauthor: Assembly Member Gloria)**

February 9, 2017

An act to amend Section 626.9 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 424, as introduced, McCarty. Possession of a firearm in a school zone.

Existing law makes it a crime to possess a firearm in a place that the person knows, or reasonably should know, is a school zone, unless it is with the written permission of the school district superintendent, his or her designee, or equivalent school authority.

This bill would delete the authority of a school district superintendent, his or her designee, or equivalent school authority to provide written permission for a person to possess a firearm within a school zone. By expanding the scope of a crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 626.9 of the Penal Code is amended to
2 read:

3 626.9. (a) This section shall be known, and may be cited, as
4 the Gun-Free School Zone Act of 1995.

5 (b) Any person who possesses a firearm in a place that the
6 person knows, or reasonably should know, is a school zone, as
7 defined in paragraph (1) of subdivision (e), ~~unless it is with the~~
8 ~~written permission of the school district superintendent, his or her~~
9 ~~designee, or equivalent school authority,~~ shall be punished as
10 specified in subdivision (f).

11 (c) Subdivision (b) does not apply to the possession of a firearm
12 under any of the following circumstances:

13 (1) Within a place of residence or place of business or on private
14 property, if the place of residence, place of business, or private
15 property is not part of the school grounds and the possession of
16 the firearm is otherwise lawful.

17 (2) When the firearm is an unloaded pistol, revolver, or other
18 firearm capable of being concealed on the person and is in a locked
19 container or within the locked trunk of a motor vehicle.

20 This section does not prohibit or limit the otherwise lawful
21 transportation of any other firearm, other than a pistol, revolver,
22 or other firearm capable of being concealed on the person, in
23 accordance with state law.

24 (3) When the person possessing the firearm reasonably believes
25 that he or she is in grave danger because of circumstances forming
26 the basis of a current restraining order issued by a court against
27 another person or persons who has or have been found to pose a
28 threat to his or her life or safety. This subdivision ~~may~~ *does* not
29 apply when the circumstances involve a mutual restraining order
30 issued pursuant to Division 10 (commencing with Section 6200)
31 of the Family Code absent a factual finding of a specific threat to
32 the person's life or safety. Upon a trial for violating subdivision
33 (b), the trier of a fact shall determine whether the defendant was
34 acting out of a reasonable belief that he or she was in grave danger.

35 (4) When the person is exempt from the prohibition against
36 carrying a concealed firearm pursuant to Section 25615, 25625,
37 25630, or 25645.

(5) When the person holds a valid license to carry the firearm pursuant to Chapter 4 (commencing with Section 26150) of Division 5 of Title 4 of Part 6, who is carrying that firearm in an area that is not in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but within a distance of 1,000 feet from the grounds of the public or private school.

(d) Except as provided in subdivision (b), it shall be unlawful for any person, with reckless disregard for the safety of another, to discharge, or attempt to discharge, a firearm in a school zone, as defined in paragraph (1) of subdivision (e).

The prohibition contained in this subdivision does not apply to the discharge of a firearm to the extent that the conditions of paragraph (1) of subdivision (c) are satisfied.

(e) As used in this section, the following definitions shall apply:

(1) "Concealed firearm" has the same meaning as that term is given in Sections 25400 and 25610.

(2) "Firearm" has the same meaning as that term is given in subdivisions (a) to (d), inclusive, of Section 16520.

(3) "Locked container" has the same meaning as that term is given in Section 16850.

(4) "School zone" means an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, or within a distance of 1,000 feet from the grounds of the public or private school.

(f) (1) Any person who violates subdivision (b) by possessing a firearm in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years.

(2) Any person who violates subdivision (b) by possessing a firearm within a distance of 1,000 feet from the grounds of a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, shall be punished as follows:

(A) By imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years, if any of the following circumstances apply:

(i) If the person previously has been convicted of any felony, or of any crime made punishable by any provision listed in Section 16580.

(ii) If the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of Title 4 of Part 6 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(iii) If the firearm is any pistol, revolver, or other firearm capable of being concealed upon the person and the offense is punished as a felony pursuant to Section 25400.

(B) By imprisonment in a county jail for not more than one year or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years, in all cases other than those specified in subparagraph (A).

(3) Any person who violates subdivision (d) shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for three, five, or seven years.

(g) (1) Every person convicted under this section for a misdemeanor violation of subdivision (b) who has been convicted previously of a misdemeanor offense enumerated in Section 23515 shall be punished by imprisonment in a county jail for not less than three months, or if probation is granted or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(2) Every person convicted under this section of a felony violation of subdivision (b) or (d) who has been convicted previously of a misdemeanor offense enumerated in Section 23515, if probation is granted or if the execution of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(3) Every person convicted under this section for a felony violation of subdivision (b) or (d) who has been convicted previously of any felony, or of any crime made punishable by any provision listed in Section 16580, if probation is granted or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(4) The court shall apply the three-month minimum sentence specified in this subdivision, except in unusual cases where the interests of justice would best be served by granting probation or suspending the execution or imposition of sentence without the

1 minimum imprisonment required in this subdivision or by granting
2 probation or suspending the execution or imposition of sentence
3 with conditions other than those set forth in this subdivision, in
4 which case the court shall specify on the record and shall enter on
5 the minutes the circumstances indicating that the interests of justice
6 would best be served by this disposition.

7 (h) Notwithstanding Section 25605, any person who brings or
8 possesses a loaded firearm upon the grounds of a campus of, or
9 buildings owned or operated for student housing, teaching,
10 research, or administration by, a public or private university or
11 college, that are contiguous or are clearly marked university
12 property, unless it is with the written permission of the university
13 or college president, his or her designee, or equivalent university
14 or college authority, shall be punished by imprisonment pursuant
15 to subdivision (h) of Section 1170 for two, three, or four years.
16 Notwithstanding subdivision (k), a university or college shall post
17 a prominent notice at primary entrances on noncontiguous property
18 stating that firearms are prohibited on that property pursuant to
19 this subdivision.

20 (i) Notwithstanding Section 25605, any person who brings or
21 possesses a firearm upon the grounds of a campus of, or buildings
22 owned or operated for student housing, teaching, research, or
23 administration by, a public or private university or college, that
24 are contiguous or are clearly marked university property, unless
25 it is with the written permission of the university or college
26 president, his or her designee, or equivalent university or college
27 authority, shall be punished by imprisonment pursuant to
28 subdivision (h) of Section 1170 for one, two, or three years.
29 Notwithstanding subdivision (k), a university or college shall post
30 a prominent notice at primary entrances on noncontiguous property
31 stating that firearms are prohibited on that property pursuant to
32 this subdivision.

33 (j) For purposes of this section, a firearm shall be deemed to be
34 loaded when there is an unexpended cartridge or shell, consisting
35 of a case that holds a charge of powder and a bullet or shot, in, or
36 attached in any manner to, the firearm, including, but not limited
37 to, in the firing chamber, magazine, or clip thereof attached to the
38 firearm. A muzzle-loader firearm shall be deemed to be loaded
39 when it is capped or primed and has a powder charge and ball or
40 shot in the barrel or cylinder.

1 (k) This section does not require that notice be posted regarding
2 the proscribed conduct.

3 (l) This section does not apply to a duly appointed peace officer
4 as defined in Chapter 4.5 (commencing with Section 830) of Title
5 3 of Part 2, a full-time paid peace officer of another state or the
6 federal government who is carrying out official duties while in
7 California, any person summoned by any of these officers to assist
8 in making arrests or preserving the peace while he or she is actually
9 engaged in assisting the officer, a member of the military forces
10 of this state or of the United States who is engaged in the
11 performance of his or her duties, or an armored vehicle guard,
12 engaged in the performance of his or her duties, as defined in
13 subdivision (d) of Section 7582.1 of the Business and Professions
14 Code.

15 (m) This section does not apply to a security guard authorized
16 to carry a loaded firearm pursuant to Article 4 (commencing with
17 Section 26000) of Chapter 3 of Division 5 of Title 4 of Part 6.

18 (n) This section does not apply to an existing shooting range at
19 a public or private school or university or college campus.

20 (o) This section does not apply to an honorably retired peace
21 officer authorized to carry a concealed or loaded firearm pursuant
22 to any of the following:

23 (1) Article 2 (commencing with Section 25450) of Chapter 2
24 of Division 5 of Title 4 of Part 6.

25 (2) Section 25650.

26 (3) Sections 25900 to 25910, inclusive.

27 (4) Section 26020.

28 (5) Paragraph (2) of subdivision (c) of Section 26300.

29 (p) This section does not apply to a peace officer appointed
30 pursuant to Section 830.6 who is authorized to carry a firearm by
31 the appointing agency.

32 SEC. 2. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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